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Letter dated 9 March 2017 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council

Pursuant to my responsibilities as President of the International Residual Mechanism for Criminal Tribunals, in accordance with rules 8 (A) and 131 of the Rules of Procedure and Evidence of the Residual Mechanism, I am officially notifying you of the failure of the Republic of Turkey to comply with its obligations, under article 28 of the statute of the Mechanism, to cooperate with the Mechanism and to comply without undue delay with a judicial order issued by the Mechanism.

By my letter of 5 October 2016 to the President of the Security Council (S/2016/841), the attention of the members of the Council was drawn to the arrest of Judge Aydin Sefa Akay by the Government of Turkey, on or about 21 September 2016, notwithstanding his ongoing assignment as a member of the appeals bench of the Mechanism in case No. MICT-12-29-R, *The Prosecutor v. Augustin Ngirabatware*.

On 10 November 2016, Mr. Ngirabatware, through counsel, requested an order to the Government of Turkey, pursuant to article 28 of the statute and rule 55 of the Rules of Procedure and Evidence, to cease its prosecution of Judge Akay so that he could resume his judicial functions in the *Ngirabatware* case, alleging undue delay in the proceedings caused by Judge Akay's arrest and detention. The Government of Turkey did not respond to the motion. On 28 November 2016, as the Pre-Review Judge in the *Ngirabatware* case, I invited the Government of Turkey to file written submissions in response to Mr. Ngirabatware's motion. The Government of Turkey did not respond to the invitation. On 21 December 2016, as Pre-Review Judge, I ordered that a public hearing be held to provide the Government of Turkey with an additional opportunity to be heard. No representative of the Government of Turkey attended the hearing on 17 January 2017.

On 31 January 2017, as Pre-Review Judge, pursuant to articles 28 and 29 (2) of the statute and rules 55 and 131 of the Rules of Procedure and Evidence, I ordered the Government of Turkey: (a) to cease all legal proceedings against Judge Akay; and (b) to take all measures necessary to ensure Judge Akay's release from detention no later than 14 February 2017, so that he could resume his judicial functions in the *Ngirabatware* case (order of 31 January 2017).

On 6 March 2017, as Pre-Review Judge, I issued a decision on non-compliance by Turkey, finding that, in the circumstances, the Government of

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Turkey had failed to comply with its obligations under article 28 of the statute in relation to the proceedings in the *Ngirabatware* case and to comply without undue delay with a judicial order issued by the Mechanism.

In accordance with rule 8 (A) of the Rules of Procedure and Evidence, I am required, as President of the Mechanism, to notify the Security Council of a matter of non-compliance with an obligation under article 28 of the statute following a competent judicial determination by the Mechanism to that effect. By the present letter, I accordingly hereby notify the Security Council of the failure of the Government of Turkey to take action to comply with the order of 31 January 2017 and release Judge Akay, which constitutes a serious breach of its international obligations.

I deeply regret, as President of the Mechanism, that, over five months having now passed since Judge Akay's initial arrest and detention, he continues to remain in detention, notwithstanding the assertion of diplomatic immunity on behalf of the United Nations and the Mechanism's issuance of a legally binding judicial order for his release. I fully anticipate that, with the support of the members of the Security Council, the matter can be promptly resolved according to law, consistent with the statute and the obligations incumbent upon all Member States under Security Council resolution 1966 (2010), so as to enable the Mechanism to fairly, independently and expeditiously discharge the essential mandate entrusted to it by the Security Council.

I should be grateful if you would bring this notification to the attention of the members of the Security Council and have it circulated as a document of the Council.

(*Signed*) Judge Theodor **Meron**
President
International Residual Mechanism for Criminal Tribunals